

FITAPELLI & SCHAFFER, LLP

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

**ERIC FREELAND, individually and on
behalf of all others similarly situated,**

Plaintiff,

-against-

**FINDLAY's TALL TIMBERS
DISTRIBUTION CENTER D/B/A/ OHIO
LOGISTICS,**

Defendant.

No. 22 Civ. 6415 (FPG)

**DECLARATION OF BRIAN S. SCHAFFER IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

I, Brian S. Schaffer, affirm under the penalties of perjury as follows:

1. I am a partner of Fitapelli & Schaffer, LLP ("Counsel" or "F&S") in New York, New York, counsel of record for Plaintiff in this matter. F&S is a well-respected and nationally recognized employment litigation firm based in New York City that represents plaintiffs in a variety of employment matters, including individual and class action litigation involving wage and hour, discrimination, and harassment claims, as well as contract and severance negotiations.
2. I am one of the lawyers primarily responsible for prosecuting Plaintiff's claims.

3. I submit this Declaration to place before the Court certain documents relied upon by Plaintiff in her opposition to Defendant's motion.

4. Attached hereto as **Exhibit A** is a true and correct copy of citations of cases that have ruled on motions to dismiss or motions for interlocutory appeal regarding New York Labor Law § 191 following the decision *Vega v. CM and Assoc. Constr. Mgmt., LLC*, 175 A.D. 3d 1144 (N.Y. 1st Dept. 2019)

5. Attached hereto as **Exhibit B** are true and correct copies of enforcement emails sent on behalf of the New York Department of Labor.

6. Attached hereto as **Exhibit C** is a true and correct copy of the oral argument transcript containing Judge Broderick's order denying defendants' motion to dismiss in *Andrews v. Rite Aid Corp.*, No. 20 Civ. 4521 (VSB) (S.D.N.Y. Mar. 11, 2021).

Dated: New York, New York
February 8, 2023

By: /s/ Brian S. Schaffer
Brian S. Schaffer

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*Attorneys for Plaintiff and
the Putative Class*